



## DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2020-0034]

RIN 1625-AA09

Drawbridge Operation Regulation; Chicago River, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is revising the operating schedule that governs the Amtrak Railroad Bridge, mile 3.77, across the South Branch of the Chicago River, at Chicago, Illinois to be operated remotely and establish an intermediate opening position.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG-2020-0034 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail [Lee.D.Soule@uscg.mil](mailto:Lee.D.Soule@uscg.mil).

### SUPPLEMENTARY INFORMATION:

**I. Table of Abbreviations** *[Delete/add any abbreviations not used/used in this document]*

CFR	Code of Federal Regulations
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DHS	Department of Homeland Security
FR	Federal Register
IGLD85	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD85
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
OMB	Office of Management and Budget
§	Section
TD	Temporary Deviation with Request for comments
U.S.C.	United States Code

## **II. Background Information and Regulatory History**

On April 8, 2020 the Coast Guard published a TD in the Federal Register (85 FR 19659) to test the proposed rule and allow mariners to provide comments from June 1, 2020 through September 1, 2020. We received one unrelated comment.

On May 4, 2021, the Coast Guard published a NPRM in the Federal Register (86 FR 23639). There we stated why we issued the NPRM, and invited comments on proposed regulatory action. During the comment period that ended on June 3, 2021, we received zero (0) comments.

## **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The Amtrak Railroad Bridge, mile 3.77, over the South Branch of the Chicago River provides a vertical clearance of 10 feet in the down position and 65 feet in the open position above LWD and a horizontal clearance of 156 feet. The bridge crosses the river on a slight skew on an “S” curve in the river requiring longer vessels to use most of the horizontal clearance for maneuvering. The South Branch of the Chicago River is part of a network of waterways that allow vessels to travel from Chicago, IL to New Orleans, LA. Cook County described the Chicago River as the 5<sup>th</sup> largest port in the United States, hosting commercial vessels over 300 tons, recreational power and sailing vessels, several passenger vessels, water taxis, paddle boats and various paddle craft. Most vessels can pass under all of the bridges in the Chicago metropolitan area without an opening, with the exception of the Amtrak Bridge. During an average weekday, 150,000

commuters travel over the Amtrak Bridge.

In accordance with general bridge regulations a drawbridge must open promptly and fully when signaled to open. Lifting the bridge to 65 feet for every vessel when most vessels only need an additional 10 feet of clearance increases the delay experienced by all modes of transportation.

The Amtrak Bridge has been operating remotely for several years without any concerns for the mariners.

#### **IV. Discussion of Comments, Changes and the Final Rule**

We received one comment to the TD that was unrelated to the bridge or proposed regulatory action. We did not receive any comments to the NPRM, and do not intend to change anything from the published NPRM.

#### **V. Discussion of Final Rule**

The Coast Guard is including in the regulations that the AMTRAK Bridge is authorized to operate remotely.

The Coast Guard is authorizing the bridge to open to an intermediate position that will provide a vertical clearance of 34 feet above LWD. A yellow light at the center of the bridge, visible to vessels approaching the bridge from both upriver and downriver sides will verify the bridge has met the intermediate height. At any time a vessel with greater air draft can radio the drawtender and request a full opening. This rule is expected to increase bridge availability to all users by 50%.

#### **VII. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge without changing the bridge schedule and it keeps the maximum advertised clearance available for vessels as needed.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V. A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### *D. Federalism and Indian Tribal Government*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted

for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. § 117.391 [Amended]

Amend § 117.391 by revising paragraph (d) to read as follows:

### **§117.391 Chicago River.**

\* \* \* \* \*

(d) The Amtrak Bridge, mile 3.77, is authorized to operate remotely and open to the intermediate position on signal, unless a request for a full opening is received by the drawtender. The bridge is required to operate a marine radio.

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M. J. JOHNSTON,  
Rear Admiral, U.S. Coast Guard,  
Commander, Ninth Coast Guard District.

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